

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHNNY EDWARD MCMAHON,

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents.

Case No. 2:12-CV-00774-MMD-(CWH)

ORDER

Petitioner has submitted an application to proceed in forma pauperis (#1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee. The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and petitioner will need to file an amended petition.

The petition is not on the court's form, as required by LSR 3-1. Petitioner will need to file an amended petition on the court's form, and he will need to attach copies of decisions by the state courts in his case. Additionally, much of the petition is legal argument. Pursuant to Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Courts, petitioner need only specify his grounds for relief and state the facts that support each ground. See Mayle v. Felix, 545 U.S. 644, 649 (2005). Legal argument is unnecessary in a habeas corpus petition. Petitioner should omit legal argument in his amended petition.

Petitioner also has submitted a motion for an evidentiary hearing (#2). This court may not conduct an evidentiary hearing if petitioner has failed to develop the factual bases of his claims in

1 state court unless petitioner can meet certain conditions. 28 U.S.C. § 2254(e)(2). At this early point
2 in the proceedings, the court is unable to determine whether petitioner has failed to develop the
3 factual bases of his claims or whether petitioner can meet the conditions for allowing an evidentiary
4 hearing.

5 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#1) is
6 **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

7 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of
8 habeas corpus pursuant to 28 U.S.C. § 2254.

9 IT IS FURTHER ORDERED that the clerk of the court shall send petitioner a petition for a
10 writ of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner shall have
11 thirty (30) days from the date that this order is entered in which to file an amended petition to
12 correct the noted deficiencies. Failure to comply with this order will result in the dismissal of this
13 action.

14 IT IS FURTHER ORDERED that petitioner shall clearly title the amended petition as such
15 by placing the word “AMENDED” immediately above “Petition for a Writ of Habeas Corpus
16 Pursuant to 28 U.S.C. § 2254” on page 1 in the caption, and petitioner shall place the docket
17 number, 2:12-CV-00774-MMD-(CWH), above the word “AMENDED.”

18 IT IS FURTHER ORDERED that petitioner’s motion for an evidentiary hearing (#2) is
19 **DENIED**.

20 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney
21 General for the State of Nevada, as counsel for respondents.

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1 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a
2 copy of the petition. Respondents' counsel shall enter a notice of appearance herein within twenty
3 (20) days of entry of this order, but no further response shall be required from respondents until
4 further order of the court.

5 DATED: May 25, 2012

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
United States District Judge